UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CEASER RAMIREZ,

Plaintiff,

v.

SOCIAL SECURITY ADMINISTRATION,

Defendant.

Case No. 22-cv-03652-SVK

ORDER ON MOTION TO DISMISS

Re: Dkt. No. 10

On April 27, 2022, Plaintiff Ceasar Ramirez,[1] representing himself *pro se*, filed a complaint in Santa Clara County Superior Court. Dkt. 2 at Ex. 1 ("Complaint"). Plaintiff, who claims that he is legally blind, alleged that his "parents, (Deceased) initially filed for Social Security Benefits, upon plaintiff's Birth using his Social Security Number [redacted]" and "Defendants never fulfilled benifits (sic) still owed to the Plaintiff, and parents did not know how to proceed to enforce benefits." Complaint ¶ 8. Defendant Social Security Administration ("SSA") removed the action to this Court, on the grounds that because Plaintiff seeks review of SSA's denial of Social Security benefits, this action arises under the constitution and laws of the United States and is therefore an action over which the district courts of the United States have original and, in this case, exclusive jurisdiction. Dkt. 2 at PDF p. 2 (citing 28 U.S.C. § 1331; 42 U.S.C. § 405(g)). All Parties have consented to the jurisdiction of a magistrate judge. Dkt. 7, 8.

SSA now moves to dismiss the complaint for lack of subject matter jurisdiction. Dkt. 10. The Court deems this matter suitable for determination without oral argument. Civ. L.R. 7-1(b). For the reasons discussed below, the Court **GRANTS** SSA's motion to dismiss. Because amendment would be futile, dismissal is **WITHOUT LEAVE TO AMEND**.

[1] Plaintiff's Complaint states that he is also known as "Caesar Ramirez." Complaint ¶ 4.

I. FACTUAL BACKGROUND

The following discussion of the facts is based on Plaintiff's complaint and the facts set forth in the Parties' submissions in connection with SSA's motion to dismiss. Plaintiff alleges that on or about January 1, 1968, shortly after his birth, his parents applied for Social Security benefits based on Plaintiff's vision disability at birth. Complaint at PDF p. 10. According to Plaintiff, SSA "continue[s] to negligently and willfully deny back benefits still owed to plaintiff." *Id.* Plaintiff alleges that his parents, now deceased, "apparently did not know how to proceed to enforce disability benefits at that time (1968) and received no guidance from the Department of Health and Human Services – Social Security office at San Jose, California." *Id.* Plaintiff asserts causes of action for "Breach if (sic) Financial Duty to pay Social Security Benefits" and "Intentional Infliction of emotional and mental distress by willfully refusing to fulfil (sic) past benefits still owed to plaintiff, proximately causing unnecessary life hardships spanning lifetime." *Id.* ¶ 10. Plaintiff seeks general and exemplary damages. *Id.* at PDF p. 9; *see also* Dkt. 18. Plaintiff was incarcerated at Salinas Valley State Prison in Soledad, California at the time the original complaint was filed in state court. Complaint at PDF p. 4. As of November 2, 2022, Plaintiff is incarcerated at San Quentin State Prison. Dkt. 17.

In support of its motion to dismiss, SSA filed the declaration of Erika De Santos, a SSA District Manager based in the agency's East San Jose District Office. Dkt. 10-1 ¶ 2. According to Ms. De Santos, agency records reveal that Plaintiff's mother filed a child's application for Supplemental Security Income ("SSI") on Plaintiff's behalf on August 19, 1974, alleging disability beginning on January 1, 1966. *Id.* ¶ 3(a). SSA denied the claim on October 17, 1975, and "[a]gency records do not show that the denial was appealed." *Id.* A second child's application for SSI was filed on October 22, 1975. *Id.* ¶ 3(b). The claim was denied on December 10, 1975, and "[a]gency records do not show that the denial was appealed." *Id.* A third application was denied on March 9, 1992, and again, "[a]gency records do not show that the denial was appealed." *Id.* According to SSA's records, Plaintiff does not have any benefit applications or appeals pending at SSA. *Id.* ¶ 3(c).

Plaintiff did not file an opposition to the motion to dismiss by the original deadline. *See*

Dkt. 15. However, the Court ordered SSA to re-serve the motion to dismiss because Plaintiff had sent letters to the Court with a different address than the address where SSA originally served the motion to dismiss. *Id.*; *see also* Dkt. 13, 14. Following re-service of the motion to dismiss, Plaintiff sent two additional letters to the Court. Dkt. 18, 19. The Court will treat Plaintiff's letters at Dkt. 13, 14, 18, and 19 as his opposition to SSA's motion to dismiss. As the Court understands them, those letters include the following statements:

- Plaintiff's letter dated October 1, 2022 refers to "little boys [who] got hurt in my life" and discusses various injuries. Dkt. 13.
- Plaintiff's letter dated October 17, 2022 states that he is "awarding" Rudy Arocha, who appears to be an inmate at Salinas Valley Prison, $2000 "for services of paralegal and Atterney (sic) Duties of my two Law Suits" and gives a prison post office box address for Mr. Arocha. Dkt. 14.
- Plaintiff's letter dated November 7, 2022 asserts that this Court has jurisdiction and that "the Social Security Office court does not have Jurisdiction over your Federal Court." Dkt. 18. In that letter, Plaintiff also asks the Court to respond to him and his "Attorney Rudy Arocha." Dkt. 18. Plaintiff states "I wrote to his home address and let him know to file a Notice of Appearance on my Behalf." *Id.* Plaintiff's notice of change of address filed on the same date also refers to "Atterney (sic) Rudy Arocha." Dkt. 17.
- Plaintiff's letter dated January 3, 2023 states that he is "waiting on a Responce (sic) Letter from you on Behalf of my law suit." Dkt. 19. He also inquires whether the Court is "interested" in a case for another person, Wesley Brown Lee, and he asks the Court to consolidate this case with a case against O'Connor Hospital (case No. 22-cv294099). *Id.*

Following receipt of Plaintiff's October 17, 2022 letter, the Court included the following directive in its October 25, 2022 order:

> Plaintiff's October 17, 2022 letter contains language that indicates Plaintiff may have retained Rudy Arocha "for services of paralegal and attorney duties" in this lawsuit and another state court lawsuit. If Plaintiff intends for Mr. Arocha to represent Plaintiff as his attorney in this action, Mr. Arocha must file a notice of appearance and comply with the other requirements set forth in this District's Civil Local Rules, including Civil Local Rule 5-1(c) (regarding registration for electronic case filing) and, if applicable, Civil Local Rule 11-3 (regarding to appear pro hac vice).

Dkt. 15. Plaintiff's subsequent letter, dated November 7, 2022, states that he informed Mr. Arocha of the need to file a notice of appearance. Dkt. 17. However, Mr. Arocha has not filed a notice of appearance in this case, and this District's records do not identify Mr. Arocha as an attorney admitted to practice in this Court. Accordingly, the Court will continue to proceed consistent with the fact that Plaintiff represents himself *pro se* in this case.

II. LEGAL STANDARD

SSA moves to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. Dkt. 10. Rule 12(b)(1) motions can challenge subject matter jurisdiction in two different ways: (1) a facial attack based solely on the allegations of the complaint, or (2) a factual attack based on extrinsic evidence apart from the pleadings. *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A facial challenge asserts that "the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction." *Id.* If a defendant initiates a factual attack by submitting a declaration with extrinsic evidence of the lack of subject matter jurisdiction, "the court need not presume the truthfulness of the plaintiff's allegations." *Id.*

III. DERIVATIVE JURISDICTION

SSA argues that the complaint should be dismissed under the doctrine of derivative jurisdiction. Dkt. 10 at 4-6. This doctrine provides that when an action is "removed from state court pursuant to § 1442, [the federal district court's] jurisdiction is derivative of the state court's jurisdiction." *In re Elko County Grand Jury*, 109 F.3d 554, 555 (9th Cir. 1997). Thus, "[i]f the state court lacks jurisdiction of the subject-matter or of the parties, the federal court acquires none, although it might in a like suit originally brought there have had jurisdiction." *Lambert Run Coal Co. v. Baltimore & O.R. Co.*, 258 U.S. 377, 382 (1922); *see also Rodriguez v. United States*, 788

Fed. Appx. 535, 536 (9th Cir. 2019) ("the long-standing derivative jurisdiction doctrine provides that if a state court lacks jurisdiction over a case, a federal court does not acquire jurisdiction on removal"); *Bullock v. Napolitano*, 666 F.3d 281, 286 (4th Cir. 2012) ("under this doctrine of derivative jurisdiction, because the North Carolina state court did not have subject-matter jurisdiction over Bullock's Title VII claim against the Secretary, neither did the district court after the Secretary removed the action under 28 U.S.C. § 1442(a)").

The gravamen of Plaintiff's complaint filed in state court is a claim for Social Security benefits. *See, e.g.*, Complaint ¶10 (asserting claims for "Breach if (sic) Financial duty to pay Social Security Benefits" and "willfully refusing to fulfill past benefits still owed to plaintiff"). In determining whether the state court had subject matter jurisdiction before removal of this case, the Court begins by noting that "[t]he United States, as sovereign, is immune from suit in state or federal court except to the extent that Congress has expressly waived such sovereign immunity." *Tritz v. U.S. Postal Service*, 721 F.3d 1133, 1136 (9th Cir. 2013). The complaint filed in state court did not cite to any statute waiving defendants' immunity from suit in state court. *See* Complaint. Nor does there appear to be any such statute that would be applicable to this action based on the allegations found in the complaint. For example, the Administrative Procedures Act, 5 U.S.C. § 702, waives the United States' sovereign immunity, but not for suit in state court, as it "creates exclusive jurisdiction in the federal courts to review decision of federal agencies." *City and County of San Francisco v. U.S.*, 930 F. Supp. 1348, 1352 (N.D. Cal. 1996). 42 U.S.C. § 405(g) permits a plaintiff to challenge the final decision of the Commissioner of Social Security, but that action must "be brought in the district court of the United States[.]" Moreover, an action based on the negligent or wrongful conduct of a government employee may be brought against the United States as a claim pursuant to the Federal Tort Claims Act, ("FTCA"). 28 U.S.C. §§ 2671-2680, but the FTCA "vests the federal district courts with exclusive jurisdiction over suits arising from the negligence of Government employees." *Jerves v. United States*, 966 F.2d 517, 518 (9th Cir. 1992).

Therefore, because the state court lacked subject matter jurisdiction over this action prior to removal, "under the derivative jurisdiction doctrine, the district court also lacks

jurisdiction." *Cox v. U.S. Dept. of Agriculture*, 800 F.3d 1031, 1032 (9th Cir. 2015). Accordingly, SSA's motion to dismiss should be granted. *See Bey v. Cnty. of Sacramento*, No. 219CV2467JAMDBPS, 2020 WL 3402400, at *2–3 (E.D. Cal. June 19, 2020), report and recommendation adopted, No. 219CV2467JAMDBPS, 2020 WL 5943976 (E.D. Cal. Oct. 7, 2020).

IV. FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

The Social Security Act provides procedures for determining eligibility for Social Security benefits within the agency and includes multiple levels for individuals to seek review of unfavorable decisions. Only after an individual has exhausted all levels of review within the agency may he seek federal court review of "any final decision of the Commissioner of Social Security." 42 U.S.C. § 405(g). That section provides, in relevant part:

> **(g) Judicial review**
>
> Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia . . .

42 U.S.C. § 405(g).

"Exhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review." *Weinberger v. Salfi*, 422 U.S. 749, 765 (1975). In this case, Plaintiff has not alleged that he has received a final decision from the Commissioner, within the meaning of and as required by 42 U.S.C. § 405(g) in order to file a federal lawsuit related to Social Security benefits.

The Supreme Court has held that section 405(g)'s "condition" on judicial review "consists

of two elements": a non-waivable, "jurisdictional" "requirement that a claim for benefits shall have been presented to the [Commissioner]," and a "waivable … requirement that the administrative remedies prescribed by the [Commissioner] be exhausted." *Mathews v. Eldridge*, 424 U.S. 319, 328 (1976).

Plaintiff alleges, and the Commissioner confirms, that Plaintiff's parents presented his claim for benefits to the agency by filing an applications for SSI benefits. Complaint ¶ 9; Dkt. 10-1 ¶ 3. However, even assuming the decades-old claims made by Plaintiffs' parents satisfied the first, non-waivable "presentment" requirement, there is a second element requiring exhaustion of administrative remedies in section 405(g), which a recent Supreme Court case explains as follows:

> Modern-day claimants must generally proceed through a four-step process before they can obtain review from a federal court. First, the claimant must seek an initial determination as to his eligibility. Second, the claimant must seek reconsideration of the initial determination. Third, the claimant must request a hearing, which is conducted by an ALJ. Fourth, the claimant must seek review of the ALJ's decision by the Appeals Council. See 20 CFR § 416.1400. If a claimant has proceeded through all four steps on the merits, all agree, § 405(g) entitles him to judicial review in federal district court.

Smith v. Berryhill, 139 S. Ct. 1765, 1772 (2019). In *Smith*, the claimant received an "ALJ hearing on the merits" but his request for Appeals Council review of the ALJ decision was untimely. *Smith*, 139 S. Ct. at 1775. However, *Smith* stated that "an ALJ hearing is not an ironclad prerequisite for judicial review." *Id* at 1774.

As noted above, section 405(g)'s exhaustion requirement is waivable. *Kildare v. Saenz*, 325 F.3d 1078, 1082 (9th Cir. 2003). To determine "whether a particular case merits judicial waiver of § 405(g)'s exhaustion requirement," the claim must be "(1) collateral to a substantive claim of entitlement (collaterality), (2) colorable in its showing that denial of relief will cause irreparable harm (irreparability), and (3) one whose resolution would not serve the purposes of exhaustion (futility)." *Id*. (internal quotation marks and citations omitted). Waiver of section 405(g)'s exhaustion requirement is not appropriate in this case because Plaintiff's claim is not collateral; instead, it is "essentially a claim for benefits." *Johnson v. Shalala*, 2 F.3d 917, 922-23 (9th Cir. 1993) (citing *Bowen v. City of New York*, 476 U.S. 467, 483 (1985). Any error in Plaintiff's benefits, if properly presented, could be remedied by retroactive

payments. *See Bass v. Soc. Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989). Finally, the purposes of exhaustion would not be served by waiver. To the contrary, upholding the requirement that Plaintiff obtain a final agency decision before seeking judicial review serves the purposes of that requirement, including permitting the agency to first consider disability claims and "to compile a record which is adequate for judicial review." *Weinberger*, 422 U.S. at 765.

Courts have also sometimes waived the requirement of a "final decision of the Commissioner of Social Security made after a hearing" where the Commissioner expressly and unambiguously waived reliance on that element of the exhaustion requirement. *See, e.g.*, *Wilson v. Commissioner of Soc. Sec.*, No. 21-10278, 2021 WL 3878252, at *3 (11th Cir. 2021) (per curiam). Here, however, the SSA has not waived the exhaustion requirement and instead moves to dismiss the case for lack of subject matter jurisdiction. Moreover, unlike in *Wilson*, where the ALJ issued an order dismissing the plaintiff's request for a hearing after he failed to appear at the hearing as scheduled, in this case Plaintiff never sought or obtained any kind of hearing, much less a final decision after a hearing, from SSA. The allegations of Plaintiff's complaint indicate that no steps were taken after his original claims were rejected.

Accordingly, the Court also dismisses the complaint for lack of subject matter jurisdiction on the grounds that Plaintiff failed to exhaust his administrative remedies.

V. LEAVE TO AMEND

The undersigned has carefully considered whether Plaintiff could further amend the complaint to state a claim over which the court would have subject matter jurisdiction. Valid reasons for denying leave to amend include "undue delay, bad faith, prejudice, and futility." *California Architectural Bldg. Prod. v. Franciscan Ceramics*, 818 F.2d 1466, 1472 (9th Cir. 1988); *see also Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau*, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the court does not have to allow futile amendments).

In light of the deficiencies noted above, the Court finds that it would be futile to grant plaintiff leave to amend the complaint. The derivative jurisdiction doctrine would preclude jurisdiction over an amended complaint because the fact would remain that the state court did not

have jurisdiction over the original complaint when it was filed. In addition, Plaintiff cannot by amending his complaint establish that he has satisfied the requirement that he exhaust his administrative remedies or that waiver of that requirement is appropriate.

Accordingly, the Court dismisses the complaint **WITHOUT LEAVE TO AMEND.** The Clerk of Court shall close the file.

SO ORDERED.

Dated: March 1, 2023

SUSAN VAN KEULEN
United States Magistrate Judge